

**ORIGINAL**Decision No. 55961

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 Howard O. Kelly and Don Moyer, )  
 doing business as KELLY AND MOYER, ) Application No. 35989  
 to operate a highway common carrier )  
 service. )

O P I N I O N

Howard O. Kelly and Don Moyer are engaged in the transportation of property in California pursuant to a permit issued by this Commission.

Applicants seek an order authorizing them to conduct service as a highway common carrier for the transportation of general commodities, with certain exceptions, generally between all points in northern, central and southern California.

This application was filed pursuant to Decision No. 50448, in Case No. 5478, dated August 17, 1954. In that decision, the Commission enunciated a policy under which it may consider operation as a highway permit carrier up to and including September 10, 1953, as evidence of public convenience and necessity, if it appears that such operation may be found to constitute common carriage under the terms of the Nolan decision (Nolan v. Public Utilities Commission, 41 C (2d) 392). The allegations of the application and the representations filed in this matter indicate, however, and the Commission finds that as of September 10, 1953, applicants were conducting their operations within the scope of the permit heretofore issued by this Commission. Such operations not having constituted highway common carriage, the sought certificate of public convenience and necessity is not a requisite for continuance of applicants' operations as conducted on the said date; and the application will be denied.

The applicants are hereby placed on notice that the Commission, by this decision, makes no finding and expresses no opinion as to whether applicants have or have not been conducting their operations within the scope of their permitted authority since September 10, 1953; and that the provisions of Section 1063 of the Public Utilities Code will be strictly enforced.

O R D E R

The Commission has considered the application and representations filed herein,

Now Therefore, IT IS ORDERED that Application No. 35989 is denied.

The effective date of this order shall be ninety days after the date hereof.

Dated at San Francisco, California, this 16th day of December, 1957.

[Signature]  
President  
[Signature]  
[Signature]  
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Commissioners